(3)

Supreme Court, U.S.
FILED
OCT 3 1995
CLERK

No. 95-262

In the Supreme Court of the United States

October Term, 1995

EDWARD A. FEAVER, acting secretary of the Florida Department of Health and Rehabilitative Services, et al.,

Petitioners

v.

ESTATE OF MARY DORIS LECLAIR, et al.,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

REPLY BRIEF OF PETITIONERS

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

JASON VAIL
Assistant Attorney General
Fla. Bar no. 298824
Counsel of Record

Office of the Attorney General
Building 1, room 200
1317 Winewood Blvd.
Tallahassee, FL 32399
(904)488-2381
(904)922-3947 (fax)

10 pp

QUESTION PRESENTED

Whether Article III of the U.S. Constitution places limits on the nature and scope of the remedies that a federal court is authorized to approve and enforce through a consent decree.

TABLE OF CONTENTS

QUESTION PRESENTED i

TABLE OF AUTHORITIES ii

REASONS FOR GRANTING THE WRIT 1

I. THE PLAINTIFFS' PROCEDURAL ARGUMENT IS HYPERTECHNICAL AND SHOULD NOT STAND IN THE WAY OF A DECISION ON THE MERITS.. . . . 1

CONCLUSION 5

TABLE OF AUTHORITIES

Cases

Bankers Trust Co. v. Mallis, 435 U.S. 381, 98 S.Ct. 1117, 55 L.Ed.2d 357 (1978) 3

Board of Education of Oklahoma City Public Schools v. Dowell, 111 S.Ct. 630 (1992) 2

Ensley Branch NAACP v. Seibels, 31 F.3d 1548 (11th Cir. 1994) 2

Evans v. City of Chicago, 10 F.3d 474 (7th Cir. 1993) . . . 3

Foman v. Davis, 371 U.S. 173, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962) 3

Freeman v. Pitts, 503 U.S. 467, 112 S.Ct. 1430, 118 L.Ed.2d 108 (1992) 2

FW/PBS v. City of Dallas, 493 U.S. 215, 110 S.Ct. 596, 107 L.Ed.2d 603 (1990). 5

Missouri v. Jenkins, — U.S. —, 115 S.Ct. 2038 (1995) . . . 5

Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 112 S.Ct. 748, 116 L.Ed. 867 (1992) 3

T. Lee v. Talladega County Board of Education, 963 F.2d 1426 (11th Cir. 1992) 2

U.S. v. City of Miami, 2 F.3d 1497 (11th Cir. 1993) 3

Other Authorities

Fed.R.Civ.P. 1 3

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1995

No. 95-262

EDWARD A. FEAVER, acting secretary of
the Florida Department of Health
and Rehabilitative Services, et al.,

Petitioners

v.

ESTATE OF MARY DORIS LECLAIR, et al.,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITIONERS' REPLY BRIEF

REASONS FOR GRANTING THE WRIT

I. THE PLAINTIFFS' PROCEDURAL ARGUMENT IS HYPERTECHNICAL AND SHOULD NOT STAND IN THE WAY OF A DECISION ON THE MERITS.

The plaintiffs' procedural argument is that the defendants[1] proceeded under a rule that does not permit jurisdictional challenges. Even if the defendants made a procedural mistake, it was irrelevant. The district court ignored the plaintiffs' procedural arguments and acted on the merits of the defendants' motion to vacate — as it was obligated to do by this Court's decisions.

In their motion to vacate, the defendants relied on Fed.R.Civ.P. 60(b)(4) and (6)[2] as their procedural vehicles. However, the defendants' appeal in the courts below clearly was to the federal courts' equitable and constitutional duty in institutional reform cases against state officials to eliminate, when appropriate, federal interference in state affairs. *See, e.g., Board of Education of Oklahoma City Public Schools v. Dowell*, 111 S.Ct. 630, 637 (1992) (federal supervision of a public school system was always intended to be temporary; such decrees "are not intended to operate in perpetuity," because of "the allocation of powers within our federal system."); *Freeman v. Pitts*, 503 U.S. 467, 112 S.Ct. 1430, 1445, 118 L.Ed.2d 108 (1992).

Indeed, the circuit courts have read this Court's precedent to impose a requirement to withdraw from institutional reform litigation and to restore local control as soon as possible. *See, e.g., Ensley Branch NAACP v. Seibels*, 31 F.3d 1548, 1574-1575 (11th Cir. 1994); *T. Lee v. Talladega County Board of*

---

[1] The defendants are the petitioners in this Court.

[2] The defendants never abandoned reliance on Rule 60(b)(6) as the plaintiffs claim in their statement of the case. Rather, in their reply brief before the Eleventh Circuit, the defendants made the same arguments as they do here: that the specific procedural vehicle was irrelevant; they invoked the federal courts' inherent equity powers to end interference in state affairs.

Education, 963 F.2d 1426, 1445 (11th Cir. 1992); *Evans v. City of Chicago*, 10 F.3d 474, 478 (7th Cir. 1993).

Moreover, the court below has recognized that an effort to terminate an institutional reform consent decree is an appeal to the court's general powers in equity. *U.S. v. City of Miami*, 2 F.3d 1497, 1509 (11th Cir. 1993) ("We conclude by noting that the district court's decision on a request to terminate or modify a consent decree is an exercise of that court's equitable power . . .").

In fact, rigid application of Rules 60(b)(4) and (6) is unjustified in an institutional reform case. Decrees in such cases, involving "the supervision of changing conduct or conditions," are inherently provisional. *City of Miami*, 2 F.3d at 1504. They are not final in the same way that other judgments are final, and do not call for rigid application of the case law that has grown up around Rule 60(b)(4). For instance, they are subject to flexible modification as warranted by changed facts or law. See *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 112 S.Ct. 748, 116 L.Ed. 867 (1992). Indeed, this Court in *Rufo* rejected rigidity under Rule 60(b)(6). *Id.*, 112 S.Ct. at 759.

Indeed, this Court frowns on a rigid, technical application of the federal rules that forecloses adjudication of the merits. *See e.g., Bankers Trust Co. v. Mallis*, 435 U.S. 381, 387, 98 S.Ct. 1117, 1121, 55 L.Ed.2d 357 (1978); *Foman v. Davis*, 371 U.S. 173, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 222 (1962).[3] Fed.R.Civ.P. 1 itself provides that the rules "shall be construed

---

[3] "It is too late in the day and entirely contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities." *Foman v. Davis*, 371 U.S. at 182.

and administered to secure the just, speedy, and inexpensive determination of every action."

The plaintiffs made the same technical procedural argument in the district court as they do here. The district court did not even address it. Instead, the district court, exercising its general equity powers, went straight for the merits. *See* petition appendix B. Thus, any procedural defects that exist in the defendants' motion are irrelevant.

The plaintiffs think that the motion should have been brought under Rule 60(b)(5), and they urge this court to send it back for refiling[4]. That would be a waste of judicial time and resources. Just as the district court did not pause over the plaintiffs' procedural fixation, this Court should address the merits.

Therefore, this Court should not be misled by the plaintiffs' red herring. It should address the merits in this case of national significance. For the case raises fundamental constitutional questions about the limits of federal judicial power to approve and to enforce a consent decree. Surely, the federal rules are not a straightjacket preventing review of fundamental questions such as the one posed here.

The court also should not be led astray by another plaintiffs' argument. The plaintiffs contend that 11 years ago they bargained away their claim for punitive damages in exchange for the decree and that now it is too late to allow the defendants to avoid their side of the bargain. This contention overlooks the fact that the plaintiffs were represented by experienced civil rights counsel and assumed the risk that the court would not have jurisdiction to enforce the decree. The district court lacked

---

[4] See plaintiffs' response brief at 11.

jurisdiction to approve and to enforce the decree at the outset 11 years ago, whatever the parties agreed among themselves. The passage of time does not confer jurisdiction anymore than the parties themselves can confer it by agreement. *See, e.g., FW/PBS v. City of Dallas*, 493 U.S. 215, 231, 110 S.Ct. 596, 607, 107 L.Ed.2d 603 (1990)[5]. Furthermore, the plaintiffs have had 11 years under the decree; certainly that is a significant benefit, especially in light of the principle that such decrees should not last forever.

CONCLUSION

Therefore, the Court should grant the writ and review the case on the merits. In the alternative, the Court should grant the writ, vacate the opinions below, and remand for reconsideration in light of *Missouri v. Jenkins*, — U.S. —, 115 S.Ct. 2038 (1995).

RESPECTFULLY SUBMITTED,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

JASON VAIL
Assistant Attorney General
Fla. Bar no. 298824
Counsel of Record

Office of the Attorney General
Building 1, room 200

---

[5] "[E]very federal appellate court has a special obligation to 'satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review,' even though the parties are prepared to concede it."

1317 Winewood Blvd.
Tallahassee, FL 32399
(904)488-2381
(904)922-3947 (fax)

Dated September 30, 1995